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APPENDIX C

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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FRANCIS LACINA, et al.,	**CASE NO. CV 82-6272 JMI**
Plaintiffs,	
v.	**STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW**
GK TRUCKING, et al.,	
Defendants.	

Pursuant to Local Rule 7.14.2., Defendants GK Trucking Corp., GK Technologies, Incorporated, including its division General Cable Company, The Penn Central Corporation and Robert Jensen submit to the Court their proposed Statement of Uncontroverted Facts and Conclusions of Law with respect to their Motion for Summary Judgment. Said Defendants contend that there are no genuine issues as to any of the proposed uncontroverted facts, and that all such facts are material.

1. GK Trucking Corp., (hereinafter "GK Trucking") was a contract carrier truck line. GK Trucking is a subsidiary of GK Technologies, Inc., which is a subsidiary of Pennsylvania Company, which

in turn is a subsidiary of The Penn Central Corporation. General Cable is a division of GK Technologies, Inc., and was the largest single customer of GK Trucking. Defendant Robert Jensen was the Chairman of the Board of GK Technologies, Inc.

2. Plaintiffs Francis Lacina, David Galbraith, Bill Knight, George Craig, Ted Edwards, Charles Beeson, Donald Evans, Robert Beck, Lou Resinger, Andrew Rogers, Buck Germany, Dan Kelly, Marvin Gates, Wilburt Bond, William Gonzales, Lester Dixon, Frank Matney and Rick Bernas were truck drivers employed by GK Trucking at its Montebello, California, terminal.

3. In 1979, GK Trucking and The International Brotherhood of Teamsters Union, Local 224 (hereinafter "the Union"), entered into a collective bargaining agreement governing the terms and conditions of employment of GK Trucking's employees (including the plaintiffs) at the Montebello, California, terminal. Said collective bargaining agreement consisted of the National Master Freight Agreement, the Western States Area Over The Road Supplemental Agreement and an August, 1979, rider. When entered into in 1979, this collective bargaining agreement was scheduled to run through June 30, 1982.

4. During late 1980, it became clear to the management of GK Trucking that it needed to reduce the wages being paid to its drivers if it was to remain competitive with other carriers, both union and non-union.

5. On February 9, 1981, after several months of negotiations, GK Trucking and the Union entered into a rider to the collective bargaining agreement covering

the 33 drivers then employed at the Montebello terminal. In this rider (known as the "concessions rider") which was approved by the drivers, the Union agreed to various concessions in the existing labor agreement and also agreed to enter into a second rider — the "system 99 rider" — for the purpose of allowing GK Trucking to open a second West Coast terminal for different freight.

6. The system 99 rider was signed by the Union and GK Trucking on July 27, 1981.

7. The 1979-1982 collective bargaining agreement between GK Trucking and the Union contained a mandatory, final and binding grievance and arbitration procedure for disputes that arose under the agreement. Article 8, Section 1, of the National Master Freight Agreement provides in pertinent part as follows:

> "All grievances or questions of interpretation arising under this master agreement or supplemental agreements thereto shall be processed as set forth below.
>
> * * *
>
> (a) All factual grievances or questions of interpretation arising under the provisions of the supplemental agreement (or factual grievances arising under the National Master Agreement) shall be processed in accordance with the grievance procedure of the applicable supplemental agreement."

8. Article 45 of the Western States Area Over The Road Motor Freight Supplemental Agreement sets forth a detailed grievance and arbitration procedure and states: "The decision of the umpire shall be final

and binding on all parties and the employee(s) involved."

9. None of the riders negotiated by the Union and GK Trucking modified the grievance or arbitration language contained in either the National Master Freight Agreement or the Western States Area Over The Road Motor Freight Supplemental Agreement.

10. In November of 1981, GK Trucking laid off 10 drivers, 5 of whom are plaintiffs herein, as a result of a reduction in work.

11. In late March, 1982, GK Trucking and the Union negotiated an entirely new labor agreement to replace the expiring National Master Freight Agreement. It was designed to enable GK Trucking to become more competitive. This agreement was put to a vote by GK Trucking's drivers and was rejected.

12. After the rejection of the new labor agreement, GK Trucking, on or about April 1, 1982, announced to its employees that it was going out of business, closing the Montebello terminal and laying them off penently.

13. As of April 16, 1982, the Montebello terminal was closed and all of the drivers, including all 18 plaintiffs herein, were laid off permanently.

14. On or about May 17, 1982, the Union and GK Trucking formalized the closure of the Montebello terminal in a change of operations hearing conducted in San Diego, California, pursuant to Article 8, Section 6, of the National Master Freight Agreement.

15. Neither the Union, any plaintiff, nor any other person filed a grievance with respect to the close of the Montebello terminal and the permanent lay-off of the GK Trucking drivers in April, 1982.

16. On or about May 18, 1982, former GK Trucking driver and union steward Walter Bache was informed by Union officials that the Union did not intend to take any action, including the filing of a grievance, to keep the Montebello terminal open.

17. As of April, 1982, most, if not all, of the plaintiffs believed that the Union was not going to take any action, including filing a grievance, regarding the closing of the Montebello terminal and their permanent lay-offs. Further, as of this month, most, if not all, of the plaintiffs believed that the Union was not representing them fairly.

18. All other plaintiffs knew no later than May, 1982, after the change of operations hearing, that the Union was not going to take any action to keep the Montebello terminal open.

19. All of the plaintiffs knew or should have known by the end of May, 1982, that the Union was not going to take any action, including filing a grievance, regarding the close of the Montebello terminal or their loss of jobs.

20. The proposal to close GK Trucking's Montebello terminal and discontinue operations was made by GK Trucking Vice President Stephen Breckley and GK Technologies, Inc., Vice President Larry Morris.

21. Neither The Penn Central Corporation nor Robert Jensen had any role whatsoever in the negotiation of the collective bargaining agreement or the two 1981 riders.

CONCLUSIONS OF LAW

Insofar as they may be mixed questions of fact and law, the following conclusions are also found by the Court to be true in all respects.

1. This is an action for a breach of a collective bargaining agreement between an employer in an industry affecting commerce and a union representing employees who are working in an industry affecting interstate commerce. The Court has jurisdiction pursuant to Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. Section 185(a).

2. Under federal law, aggrieved employees may not state a claim for relief for breach of a collective bargaining agreement unless they exhaust mandatory, binding, final grievance and arbitration procedures in the agreement. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 563, (1976).

3. Employees are relieved of this exhaustion requirement if their union has breached its duty of fair representation toward them in processing their grievances. *Vaca v. Sipes*, 386 U.S. 171 (1967).

4. Because the plaintiffs have not exhausted the grievance and arbitration procedures available to them under the collective bargaining agreement between GK Trucking and the Union, in order to succeed in this Section 301 action, they must first demonstrate that the Union breached its duty of fair representation, and then establish that GK Trucking breached the collective bargaining agreement. *Hines v. Anchor Motor Freight, Inc., supra; United Parcel Service, Inc. v. Mitchell*, 451 U.S.

5. In *DelCostello v. Teamsters*, ___ U.S. ___, 103 S.Ct. 2281, 76 L.Ed. 476 (1983), the Supreme Court

held that a six-month statute of limitation applies to suits brought against an employer and a union for breach of the collective bargaining agreement and breach of duty of fair representation.

6. The six-month statute of limitation applies to cases involving grievances which result in an arbitration award and to cases in which grievances could be filed, but are not. *McNaughton v. Dillingham Corp.*, 707 F.2d 1042, 1046 (9th Cir. 1983); *Barina v. Gulf Trading & Transp. Co.*, 726 F.2d 560, 561 n. 1 (9th Cir. 1984); *Bigbie v. Local 142, International Brotherhood of Teamsters*, 530 F. Supp. 402 (N.D. Ill. 1981).

7. The six-month statute of limitation enunciated by the Supreme Court in *DelCostello* is retroactive in those cases in which that limitation period would lengthen the time to bring suit rather than shorten it. *Barina v. Gulf Trading and Transportation Co.*, 726 F.2d 560, 564, n. 8 (9th Cir. 1984). In the case at hand, the statute of limitations in a Section 301 action brought against an employer in California after 1981 but before 1983 was 100 days pursuant to *United Parcel Service, Inc. v. Mitchell, supra*, and Section 1288 of the California Code of Civil Procedure. See *Aragon v. Federated Dept. Stores, Inc.*, ___ F.2d ___, 85 Daily Journal D.A.R. 229 (9th Cir. 1985)

8. In cases where no grievance is filed, the six-month statute of limitation period begins to run "when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged [violation]." *Hungerford v. United States*, 307 F.2d 99, 102 (9th Cir. 1962); *NLRA v. Don Burgess Construction Corp.*, 596 F.2d 378 (9th Cir.), *cert. denied*, 444 U.S. 940 (1979); *Metz v. Tootsie Roll Industries*, 715

F.2d 299 (7th Cir. 1983), *cert. denied*, 104 S.Ct. 976 (1984).

9. In the case at hand, all of the plaintiffs knew or should have known by April, 1982, or no later than May, 1982, that the Union was not going to take any action, including the filing of a grievance, to keep the Montebello terminal open or to oppose their permanent lay-offs. Because the complaint in the instant lawsuit was filed on December 3, 1982 — more than six months after the plaintiffs held these beliefs — their Section 301 action against the defendants is barred by the six month statute of limitations.

10. Plaintiffs' purported second claim for relief, alleging that the termination of their employment was undertaken "for the purpose of discouraging the plaintiffs' membership in a labor organization in violation of Section 7 and 8(a) of the NLRA (National Labor Relations Act)", involves an alleged unfair labor practice under Section 7 and 8 of the NLRA and is therefore preempted by federal labor law. *Magnuson v. Burlington Northern, Inc.*, 576 F.2d 1367 (9th Cir.) *cert. denied*, 439 U.S. 930 (1978); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). Plaintiffs' second claim for relief, allegating that their terminations were based on discouraging membership in a labor organization, is therefore subject to dismissal since it is preempted. *Farmer v. Carpenters*, 430 U.S. 290, 305, (1977).

11. All claims against Defendants Penn Central Corporation and Robert Jensen should be dismissed since there is no evidence of their participation in any of the alleged wrongful acts.

12. There are no genuine issues covering any of the foregoing facts, and all such facts are material.

13. Judgment shall be entered in accordance with the proposed summary judgment submitted herewith.
DATED: 25 Feb. 85

JAMES M. IDEMAN
United States District Judge